IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/08/2003

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THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

C.R.P.NO.3654 of 1997 and C.R.P. No. 3655 of 1997

R.Angappan .. Petitioner in
both revision petitions

-Vs-

1. A.G.Srinivasan .. 1st Respondent in
both revision petitions
2. A.G.Lakshmipathy
3. A.G.Kannan
4. A.G.Selvanabi .. R2 to R3 are in
C.R.P.No.3655 of 1997

!For Petitioner :: Mr.S.Parthasarathy
for M/s.Sarvabhauman Associates

^For Respondents:: Mr.T.R.Rajaraman

Prayer: These revisions are filed against the common order dated 20-1 0-1997 made in RCA No.2 of 1997 & 3 of 1997 on the file of Appellate Authority-Sub Court, Karur confirming the fair and decretal order dated 31-1-1997 made in RCOP Nos.20 of 1994 and 4 of 1995 on the file of the Rent Codntroller-District Munsif, Karur respectively.

:ORDER
These two Revision Petitions arise out of a common order passed in RCOP Nos.20 of 1994 and 4 of 1995 and the connected appeals in RCA Nos.2 and 3 of 1997 respectively.

2. The petitioner herein is the tenant in both the revisions. The respondents herein preferred PCOP No.20 of 1994 for an order of eviction against the petitioner/tenant on the ground of wilful default and owner's occupation under Sections 10(2)(i) and 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 160) (hereinafter referred to as 'the Act'). RCOP No.4 of 1995 was preferred by the petitioner under Section 8(5) of the Act for grant of permission to deposit the rent into the Court due for the months of October and November, 1994 and also for subsequent months and

continue to deposit the future rents. The learned Rent Controller in RCOP 20 of 1994, ordered eviction against the petitioner on the ground of wilful default while rejecting the claim of the landlord for owner's occupation. RCOP No.4 of 1995 preferred by the petitioner/tenant was dismissed by the learned Rent Controller in view of the order of eviction passed in RCOP 20 of 1994. The lower Appellate Authority also confirmed the order of eviction ordered by the Rent Controller.

3. As far as the petitioner's application in RCOP No.4 of 1995 was concerned, the lower Appellate Authority was of the view that the same was not maintainable inasmuch the same came to be filed after the filing of RCOP No.20 of 1994.

4. The respondents filed RCOP No.20 of 1994 for eviction of the petitioner on the ground of wilful default by alleging commission of wilful default on the part of the petitioner for the period subsequent to August 1991 till the date of filing of the eviction petition. It was also contended that the rent which was fixed at Rs.750/- per month on and from 1-1-1986 was subsequently increased to Rs.1500/- from 1-1-1990 with the consent of the petitioner and that after adjustment of a sum of Rs.10,000/- borrowed from the petitioner on 25-1-1973, rent fell due from August, 1991 onwards.

5. According to the petitioner, the rent which was fixed at Rs.750/- per month from 1-1-1986 continued as such, that it was never increased to Rs.1500/- as claimed by the respondents, that the respondents refused to receive the rent from the month of February, 1993, that thereafter, when the same was sent by post in the form of Demand Draft on various dates between 5-8-1993 and 18-6-1994, the respondents refused to receive the same on all those occasions, that subsequently, the petitioner sent a legal notice dated 22-9-1994 along with a Demand Draft for Rs.14,250/- covering the period February, 1993 to August, 1 994 stating that if the same is not accepted, the respondents should specify the bank account. In the course of the evidence before the learned Rent Controller, it was admitted on behalf of the respondents that a Demand Draft for Rs.14,250/- was received under protest, that the subsequent month rent, namely, September 1994 at Rs.750/- was also received by post and that it was not correct to state that the rent for October 1994 at Rs.750/- was refused. It is also in evidence as admitted on behalf of the petitioner that the rent for October and November, 1994 were deposited in Court in RCOP No.4 of 1995.

6. The learned Rent Controller held that the rent was only Rs.750/- and not Rs.1500/- as claimed by the respondents. The learned Rent Controller also reached a conclusion that there was wilful default as alleged by the respondents. However, it was held that even the admitted rent was not paid into the Court after the filing of RCOP No.4 of 1995 in the respective months. Though it was contended on behalf of the petitioner that because of his ill-health, he could not deposit the rents into Court on the respective dates, the Rent Controller held that such an excuse will not erase the factum of wilful default committed by the petitioner. It was on that ground, namely, that the non-deposit of the rents subsequent to the alleged period of default on the respective months was found to be the basis for holding that the petitioner committed wilful default for ordering eviction.

7. In the course of submissions before me, it was noticed that the period of wilful default narrowed down to the months of October and

November, 1994 since the application for eviction came to be filed on 21-12-1994. When the evidence available on record was perused, it came to light that there was no specific evidence covering this aspect. The learned counsel appearing for both parties agreed that a finding can be called for from the learned Rent Controller. Therefore, by my order dated 28-3-2003, the learned Rent Controller was directed to submit his findings as regards the non-payment of rent for the months of October and November, 1994 after permitting both the parties to let in evidence on that limited question. The learned Rent Controller thereafter submitted his findings on 25-4-2003. P.W.1 was reexamined on 16-4-2003 who admitted in chief-examination itself that the rents for the months of October and November, 1994 were not paid to the landlord and that the same were deposited into Court in RCOP No.4 of 1995. It has therefore, come out in evidence that the rents for the said two months were deposited into Court only in the month of June 1995. Therefore, in view of the said findings now brought out in evidence, now the question for consideration is, whether the petitioner committed wilful default in payment of rents as alleged by the respondents in RCOP No.20 of 1994?

8. Having regard to the categoric finding now recorded in the form of un-controverted evidence tendered by P.W.1 himself, the rent for October and November, 1994 was not even tendered to the respondentslandlord for the respective months. They were in fact, deposited into Court only in the month of June 1995 even though the RCOP No.4 of 199 5 filed by the petitioner under Section 8(5) of the Act was made as early as on 11-1-1995. The explanation offered on behalf of the petitioner for the delay in the deposit of rent was his physical disability, namely, diabetis. The premises is a non-residential premises. Admittedly, it is a partnership business being run by the petitioner along with his brothers. In such circumstances, the lower authorities rightly rejected the lame excuse tendered on behalf of the petitioner for not depositing the rents into Court on the respective dates. That apart, the fact that the petitioner did not even tender the rents for the months of October and November, 1994 has been tacitly admitted by him when he was re-examined on 16-4-2003 in his chief examination itself, as now reported by the learned Rent Controller in his report dated 25-4-2003. The rents for those two months have been subsequently deposited only in the month of June 1995 in RCOP No.4 of 1995.

9. The law is well settled that for filing an application under Section 8(5) of the Act for deposit of rent into Court, the other ingredients of the said provision, viz., the previous tender of the rents on the respective months, in the event of refusal of receipt of the rent, a demand to be made by notice in writing requiring the landlord to specify within 10 days from the date of receipt of such notice, a bank into which the rent might be deposited by the tenant to the credit of the landlord and in the event of the landlord not specifying the bank account as per Sub Section 2 of Section 8 of the Act, the tenant should remit the rent by Money Order after deducting the Money Order commission. Only if the landlord refused to receive the rent remitted by Money Order as provided under Sub Section 4 of Section 8, it is open to the tenant to seek for deposit of the rent into Court under Sub Section 5 of Section 8.

10. This settled legal position has been reaffirmed by the Hon'ble Supreme Court and useful reference can be had to the Judgment reported in 2002(4) CTC 572 (E.PALANISAMY versus PALANISAMY (D) BY LRS. & OTHERS).

Paragraphs 7 and 8 are relevant for our present purpose which reads as under:
"7. Again in M.Bhaskar V. J.Venkatarama Naidu, 1996(6) SCC 228 with reference to similar provisions contained in the A.P.Buildings (Lease, Rent and Eviction) Control Act, 1960 this Court observed that when the landlord is evading payment of rent, the tenant has to follow the procedure prescribed under Section 8 of the Act, i.e. to issue notice to the landlord to name the Bank and if he does not name the Bank, the tenant has to file application before the Rent Controller for permission to deposit rent. The tenant did not follow that procedure. Omission to avail of the prescribed procedure dis-entitles the tenant to plead that there was no wilful default on his part. The landlord was, therefore, entitled to seek eviction on the ground of wilful default in payment of rent on the part of the tenant.
"8. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straightaway invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. Sub-sections (2),(3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference. The impugned judgment of the High Court, therefore, does not call for interference. These appeals are dismissed. We are informed that the landlords have already taken possession of the suit premises in pursuance of the High Court judgment."
(Emphasis added)

11. This position has also been stated by His Lordship Mr.Justice K.Raviraja Pandian in the judgment reported in 2002(2) CTC 415 (S.V. JANARDANAM & ANOTHER versus D.KIVRAJ SOWKAR & TWO OTHERS), in the following words in paragraphs 32 and 33.
"32. Under Section 10 of the Act, a duty is cast on tenant to tender the rent to landlord. Rent becomes arrear if the rent is not tendered to landlord within 15 days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable. Section 8 of the Act deals with consequences where the landlord refuses to issue receipt or refuses to receive the rent, Section (1) says whenever landlord receives any payment towards rent or advance, he shall issue a receipt duly signed by him for the actual amount of rent or advance received by him. Section 8(2) says that where landlord refuses to accept or evades the receipt of rent lawfully payable to him, tenant may by notice in writing, require landlord to specify within ten days from the date of receipt of notice by him, a bank into which the rent may be deposited to the credit of landlord. If landlord specifies the bank, tenant shall deposit the rent as and when it becomes due in that account till he gets further instructions of landlord. As per Section 8(4), if landlord does not specify bank, tenant is bound to remit the rent to landlord by money order, after deducting the money order commission. In spite of sending rent by money order, if landlord refuses to accept the same, tenant can deposit the amount in Court under Section 8(5) of

the Act.
"33. In the teeth of the above statutory provision, the contention of the respondents that the rents for the months of June, 1993 to October, 1993 deposited in the civil suit in November, 1993 would enure to the benefit of the Rent Control proceedings cannot at all be accepted. The deposit made not in compliance with the statutory provision cannot be considered as valid deposit."

12. In the light of the above said legal position prevailing, when the case of the petitioner is analysed, as already held by me, the petitioner admittedly failed to tender the rents for the months of October and November, 1994 on the respective due dates. It is also not in dispute that the petitioner did not take recourse to the proceedings under Section 8(5) of the Act after following the procedure prescribed in the preceding Sub Sections of Section 8. In such circumstances, the application filed by the petitioner under Section 8(5) of the Act cannot be held to be a proceedings validly made under the Act. The resultant position would therefore, be that the default committed by the petitioner for the months of October and November, 1994 stood established.
13. Then the next question for consideration is as to whether the same can be construed as wilful default on the part of the petitioner in order to hold that the eviction ordered was justified?
14. Mr.Parthasarathy, learned counsel appearing for the petitioner relied upon AIR 1985 SC 582 (S.SUNDARAM PILLAI, ETC. versus V.R. PATTABIRAMAN, ETC.), paragraph 25, AIR 1999 SC 3041 (J.JERMONS versus ALIAMMAL & OTHERS), paragraph 80, while Mr.T.R.Rajaraman, learned counsel appearing for the respondents relied upon 1994(2) LW 524 (MOHAMED ROWTHER versus S.S.RAJALINGA RAJA & TWO OTHERS) and 2001(1) LW 801 (K. S.PANDIAN versus G.RUKMANI BAI & THREE OTHERS).
15. In the judgment reported in AIR 1985 SC 582 (cited supra), para 25 reads as under:
"25. Thus, a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default, after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above."
(Emphasis added)

16. Similarly para 18 of the Judgment of the Hon'ble Supreme Court reported in AIR 1999 SC 3041 reads as under:
"18. Here, 'wilful default' implies intentional or conscious violation of obligation to pay the rent due; it may also be on account of supine indifference or callous or recalcitrant conduct. But if the default has occasioned on account of ignorance, accident or compulsion or circumstances beyond the control of the tenant, it cannot be termed as 'wilful default'. This has to be determined as a question of fact on the facts and in the circumstances of each case."

17. A reading of the above said paragraphs makes it clear that mere non-payment of rent though may be constructed as 'default', that may not become 'wilful default' unless such default is intentional, deliberate, calculated and was made with full knowledge of consequences flowing therefrom. It will also become wilful when such default was committed without any just or wilful cause or on account of ignorance, accident or compulsion or circumstances beyond the control of the tenant.

18. In the case on hand, the only explanation tendered on behalf of the petitioner was, by P.W.1, the petitioner himself, stating that he being a diabetic was not in a position to deposit the rent into Court prior to June 1995. We are concerned with the default committed by the petitioner for the months of October and November, 1994. It is not the case of the petitioner that the rents were tendered on the respective due dates in respect of those two months and that they were refused by the respondents. It is also not the case of the petitioner that the respondents were called upon to specify the bank account as stipulated under Section 8(2) of the Act, nor was it sent by Money Order as per Section 8(4) of the Act. In such circumstances, the petitioner had no other explanation to offer for not tendering the rents on the respective dates. It will have to be borne in mind that a serious tussle was going on as between the petitioner and respondents in respect of the quantum of rent as well as in the payment of rents for quite some time prior to the months of October and November, 1994. Therefore, the action of the petitioner in not tendering the rents for the months of October and November, 1994 can only be construed as supine indifference shown on the part of the petitioner in the matter of payment of rents to the respondents.

19. Though Mr.Parthasarathy, learned counsel appearing for the petitioner would state that the eviction ordered by the courts below was on the ground of wilful default committed by petitioner subsequent to the filing of the eviction petition, and therefore, except by way of recourse to Section 11(4) of the Act, there could not have been an order of eviction by the lower authorities, I am of the view that the order of eviction ordered by the Courts below can be confirmed having regard to the findings as to non-payment of rents in respect of the months of October and November, 1994 which period indisputably was covered by the application for eviction preferred by the respondents in RCOP No.20 of 1994.

20. Therefore, on that score, I do not find any scope to interfere with the ultimate conclusion of the lower authorities in ordering the eviction as against the petitioner. Therefore, I hold that the non-payment of rents for the months of October and November, 1994 on the respective due dates would amount to wilful default committed by the petitioner, and therefore, the eviction orde red on the ground of wilful default by the learned Rent Controller as confirmed by the lower appellate authority was perfectly justified.

21. Having regard to my above said conclusion, I do not find any necessity to go into the other contentions raised on behalf of the respondents, namely, that the rejection of the application on the ground of owner's occupation should also be held in favour of the respondents.

For the foregoing reasons, the Revision Petitions fail and they are dismissed. No costs.

Index: Yes
Internet: Yes

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1. The Sub Judge,
Karur.

2. The Rent Controller/The District Munsif,
Karur.
F.M.IBRAHIM KALIFULLA, J.
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